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COMMITTEE AGAINST TORTURE

Twelfth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 180th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 21 April 1994, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.180/Add.1.

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Nepal (continued) (CAT/C/16/Add.3)

1. At the invitation of the Chairman, Mr. Dhakal (Nepal) resumed his place at the Committee table.

2. Mr. DHAKAL (Nepal) said that since the questions put by the Country Rapporteur often overlapped with those raised by other members of the Committee, he would attempt to provide consolidated answers to all the questions asked. On the question how international law was incorporated into Nepalese law, he said that Nepal had a common-law system. The national legislative process was a parliamentary process. Once a bill became law, any provisions of international conventions it incorporated came into force at the national level.

3. Questions had been asked regarding compensation for victims of torture. The bill on the subject was still before Parliament. Once it had been enacted, he would be in a position to provide the Committee with fuller information.

4. Concern had been expressed regarding the independence of the judiciary. In any democracy it was important that the public should have faith in the judiciary: the Constitution thus provided for its independence. Judges were appointed by His Majesty the King on the recommendation of a Judicial Council composed of the Chief Justice of the Supreme Court, the Minister of Justice, two senior judges of the Supreme Court and one distinguished jurist. Judges at other levels were appointed by the same Council, and judicial service officers were appointed by a Judicial Service Commission. No executive body could prevail over the decision of a judge, who could be removed only on a decision of the Judicial Council, and with the approval of a two-thirds majority of Parliament.

5. The organization of the Police Service was governed by the Police Act, which determined the sanctions to be applied to personnel infringing Service Rules. Offences other than those against the internal regulations were dealt with under normal criminal procedure. The Standing Army was governed by the Military Service Act. The Commander-in-Chief was appointed by His Majesty the King on the recommendation of the Prime Minister. Military personnel committing offences in the course of their duties were brought before a court martial. Other offences committed by military personnel were dealt with through the criminal justice system.

6. The process of ensuring that police, military, prison and border personnel became aware of Nepal's obligations as a party to the Convention was a lengthy one. Training programmes existed for government officials. The National Administrative College provided courses, not only on development issues, but also in the social sciences, including aspects of the international legal system and the conventions and treaties to which Nepal was a party. Individual ministries also ran their own courses: the Ministry of

the Interior, for instance, organized workshops and seminars for District Chief Officers, involving lectures on all aspects of human rights encountered in the day-to-day task of maintaining law and order, including fostering good relations with the general public. At a lower level, a textbook existed describing the United Nations and other international systems; and study of those systems was included on the syllabus of a variety of disciplines.

7. The Public Offences Act 1970 was still in force, but he wished to stress that it was not randomly applied. Under its provisions, by virtue of his quasi-judicial status a Chief District Officer could detain the accused in custody for up to five months, but only in accordance with the proceedings applicable in the courts. A Chief District Officer could not arbitrarily detain a person under the provisions of the Act, and must take a decision in the case within five months. The procedure involved differed in no respect from that applied in the courts.

8. Police officers had indeed been disciplined following instances of torture or ill-treatment. He had no statistics on the number of police offenders prosecuted, but would request figures from his Government and transmit them to the Committee in due course. Offences committed by prison guards who were members of the Police Service were subject to disciplinary action under the Service Rules. If the offence committed was such as to warrant a fuller investigation, it would go before the public prosecutor in the District Court.

9. Mr. Burns had raised a fundamental question regarding Nepal's assumption of a universal jurisdiction over torturers within its territories. He assured members that he would convey that concern to his country's authorities for their consideration. On the question of refugees, he already had access to statistics on the number of Bhutanese refugees, and it was for that reason that he had submitted them. There were also a large number of refugees from other countries. He would request more detailed statistics from his Government, and transmit them to the Committee in due course. The presence of more than 100,000 refugees in Nepal imposed a massive burden on its economic, social and environmental resources, particularly in the light of the country's status as a least developed country, whose per capita income had been only US$ 170 in 1992. However, the problem could not be resolved unilaterally. Furthermore, despite its hosting of so many refugees, Nepal was not yet a party to the 1951 Convention relating to the Status of Refugees.

10. With regard to the effect on implementation of the Convention of the proclamation of a state of emergency, the Constitution contained no specific provision in that regard. It provided that if a situation of grave emergency arose owing to war or external aggression or armed revolt or extreme economic depression, whereby the sovereignty and integrity of the Kingdom of Nepal or the security of any part of the country was threatened, His Majesty the King could proclaim a state of emergency. Any such proclamation must be laid before the House of Representatives within three months for its approval. Certain provisions of the Constitution could be suspended in order to deal with the emergency. The right to the remedy of habeas corpus was not suspended. Nor was there any provision that specifically prejudiced the Convention. However, if, under the state of emergency, legal instruments

incorporating provisions of the Convention were suspended, then the corresponding provisions of the Convention were themselves automatically suspended.

11. Various institutions existed for the protection and promotion of human rights. At the parliamentary level, there was a Foreign Relations and Human Rights Committee, whose task was to review domestic human rights laws and international human rights instruments. As to a judicial organ, the courts themselves were deemed to be independent institutions in that regard. But Nepal had no separate national institution, such as existed in certain other countries, to ensure the protection and promotion of human rights.

12. Some members had asked for more general information on Nepal. With an area of 147,180 square kilometres, Nepal was three times the size of Switzerland, and had three times Switzerland's population; but its national income was incomparably lower. With regard to the ceiling of compensation provided for in the compensation bill, 50,000 Nepalese rupees represented US$ 1,000 at the current exchange rate.

13. On the question of his Government's position regarding contributions to the United Nations Voluntary Fund for Victims of Torture, he would request the competent government authority to give favourable consideration to the matter.

14. Several members had expressed concern at the format of the initial report of Nepal. He noted Mr. El Ibrashi's observation that articles 3, 4, 5, 6 and 7 had not been dealt with in the report in accordance with the Committee's guidelines. The process of reporting was still in its infancy in Nepal. While a lack of resources was a problem, serious consideration was also being given to ways of improving the reporting system itself. Noting that the Convention provided for initial and periodic reports, he said that, if provision also existed for a supplementary report of the kind requested by the Committee, his delegation would be pleased to furnish one. In any event, he would provide the Committee with additional information at a future date.

15. The CHAIRMAN thanked Mr. Dhakal for his comprehensive answers to members' questions. Any contribution to the Voluntary Fund, however nominal, was of undeniable symbolic value to the victims themselves. He took note of the undertaking given by the representative of Nepal that the Committee's guidelines would be adhered to in preparing his country's next report.

The public part of the meeting was suspended at 3.55 p.m. and resumed at 4.35 p.m.

16. Mr. BURNS (Country Rapporteur) read out the Committee's conclusions, adopted in closed meeting, on the initial report of Nepal:

"The Committee against Torture commends the Kingdom of Nepal for its timely report.

The report was scant on detail and did not follow the guidelines in CAT/C/4/Rev.2.

It was, however, supplemented by an addendum and by the oral introduction.

Positive aspects

Nepal is taking positive steps to meet its obligations under the Convention against Torture and has in place the democratic institutions necessary to do so. This is all the more impressive in the light of the lack of economic resources that the country has available to it.

Subjects of concern

The Committee against Torture notes that Nepal is currently considering legislation incorporating a crime of torture into its domestic law and is also enacting a compensation scheme.

The Committee against Torture is concerned that the proposed definition of torture is not as wide as that required by article 1 of the Convention against Torture.

The Committee is also concerned that the capacity to collect the data necessary to carry out its reporting functions under article 19 of the Convention may also be lacking.

The Committee is also concerned to note that several cases of police maltreatment of prisoners and asylum-seekers have been reported by non-governmental organizations and the United Nations Special Rapporteur, but that there is no evidence of criminal prosecution of such officers.

Recommendations

1. That a supplementary report setting out in full answers to the questions raised by the Committee at the meeting today and any other pertinent information be prepared by the Kingdom of Nepal and forwarded to the Committee within 12 months, such additional report to follow the guidelines laid down by the Committee.

2. That the Kingdom of Nepal be encouraged to enact legislation incorporating the definition of torture as contained in the Convention against Torture as soon as possible, together with ancillary compensation legislation.

3. That a vigorous programme of education be undertaken with police officers and border guards, so that they may more readily understand their obligations as agents of the State pursuant to the Convention against Torture."

17. Mr. DHAKAL (Nepal) thanked the Committee for its conclusions and recommendations, which he would communicate to his Government. He was sure that no effort would be spared to improve his country's record of compliance with the Convention.

18. He had earlier omitted to respond to questions from members of the Committee regarding reports by non-governmental organizations, including Amnesty International, on alleged cases of torture or maltreatment in Nepal. Most of the cases referred to in the communication distributed by Amnesty International had been dealt with by his Government in a series of replies sent to the United Nations Special Rapporteur, who had acknowledged receipt of those replies at the fiftieth session of the Commission on Human Rights. He urged the Committee to investigate very carefully the veracity of the reports submitted to it by non-governmental organizations, since he was firmly convinced that many were unfounded.

19. In reply to Mrs. Iliopoulos-Strangas, he said that under Nepal's Constitution foreigners were accorded freedoms equivalent to those of Nepalese citizens. However, the latter had certain additional rights in respect of movement within the country, occupations and professions, and residence, all of which related to economic matters. The right to information was accorded to foreigners but property rights were confined to Nepalese citizens. Foreigners had equal rights under the criminal justice system, regarding for example the right to a counsel of one's choice and the right to take action against pre-trial detention.

20. Cases under the Public Offences Act 1970 were heard by the Chief District Officer, a quasi-judicial body, but proceedings were subject to the same rules as those of full judicial bodies. The Chief District Officer could not hand down a sentence of more than six months' imprisonment. Moreover, all persons charged under the Act were released on bail during the proceedings and there was no provision for arbitrary detention. Appeal was to the Appellate Court, a full judicial body. Under section 118 of the Civil Court Act, no court or quasi-judicial body could keep a person in detention if the maximum sentence for the charge against him was three years' imprisonment.

21. The CHAIRMAN thanked Mr. Dhakal for the additional information he had provided and for his constructive and spirited cooperation.

22. Mr. Dhakal (Nepal) withdrew.

The public part of the meeting ended at 4.55 p.m.